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TAGS: [CASC](#) [ASEC](#) [PREL](#) [PGOV](#) [PREF](#) [PHUM](#) [CS](#)

SUBJECT: COSTA RICA GRANTS REFUGEE STATUS TO CHERE LYN TOMAYKO; MAY  
SET PRECEDENT FOR FUTURE CLAIMS

REF: A. San Jose 524

[B](#). 07 San Jose 1746

[C](#). 07 San Jose 1604

[1](#)1. (SBU) SUMMARY: In an unprecedented move that may have long term repercussions, Minister of Public Security Del Vecchio granted U.S. fugitive, Chere Lyn Tomayko, refugee status on July 23, thereby halting her extradition to the U.S. Tomayko, wanted in Texas to answer to international child abduction charges, claimed (without substantiation) that she was a victim of domestic violence and that the U.S. legal system would be unable to protect her from future violence if she were extradited. Manipulating the Costa Rican media and playing to Costa Rica's self-image as a protector of human rights, Tomayko and her team of supporters were able to persuade Del Vecchio to confer refugee status even before the Supreme Court had issued its ruling on Tomayko's extradition. In doing so, the Minister unilaterally contradicted the long standing extradition treaty between Costa Rica and the U.S., and opened the GOCR to a possible avalanche of spurious refugee status requests. The following is our wrap-up on this case, for the record. END SUMMARY.

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THE ARREST  
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[1](#)2. (SBU) Tomayko has been wanted since 2000 under a federal indictment for parental child abduction. She fled to Costa Rica in 1997 with her daughter Alexandria after a protracted custody battle with the father of the child, Amcit Roger Cyprian. Of note, during the battle, Tomayko did not allege any domestic violence; she first raised the issue just before she received refugee status in July 2008, and there is no record of prior domestic violence complaints against Cyprian. A provisional warrant was obtained when she was located in the summer of 2007, and she was arrested by Costa Rican authorities in September 2007 (Refs. A-C). Soon after her arrest and the start of extradition proceedings, Tomayko and her team of supporters went into high gear to block her return to the U.S.

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THE MARRIAGE (TO A COSTA RICAN NATIONAL)  
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[1](#)3. (SBU) Tomayko first attempted to avoid extradition by marrying her live-in Costa Rican partner (and father of two of her children). The Costa Rican constitution forbids the extradition of Costa Rican citizens and an expedited naturalization process exists for the spouses of Costa Ricans. Marriage is thus often used by individuals in extremis wishing to avoid having to leave the country. Tomayko and her partner, after a courtship of five plus years and the birth of two children, were married inside her prison in April 2008. However, as the extradition treaty between Costa Rica and the U.S. stipulates that naturalization proceedings for fugitives must be suspended while requests for extradition are pending, Tomayko's

position was still insecure.

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THE ALLEGATIONS  
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¶4. (SBU) Then, Tomayko shared her story widely and publicly, building a coalition to help her avoid extradition. With the help of her legal team, she gained the ear of several sympathetic governmental and non-governmental groups, including the Public Defender's Office, the National Women's Institute (Spanish acronym INAMU), and the Ombudsman's Office of the GOCR. Local media helped by painting the extradition request as a callous move which would "separate an abused mother from her children." To all the parties involved, Tomayko repeated her unsubstantiated allegations of domestic violence suffered at the hands of Cyprian and her fear that she and her daughter would be in danger if they were returned to the U.S.

¶5. (U) NOTE: Tomayko's case already had enjoyed some notoriety in the local media. This was due to expatriate media outlets (ironically) claiming that the U.S. Embassy had "protected" Tomayko from Cyprian since 2002 by allegedly dragging its feet in passing information to the FBI regarding Tomayko's whereabouts. These allegations are untrue. END NOTE.

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THE REQUEST FOR REFUGE  
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¶6. (SBU) Having put together her strategy and her team, Tomayko formally requested refugee status from the Immigration Director. However, the Director was unwilling to act on unsubstantiated

allegations of abuse or the idea that the U.S. legal system was unable to protect her. Finding no legal basis under Costa Rican law or international law for granting her request, the Director refused her application and a subsequent appeal.

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THE FINAL PUSH  
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¶7. (SBU) With her scheduled July 17, 2008, extradition date drawing near, Tomayko and her team filed three habeas corpus petitions to the Supreme Court, postponing her extradition until the Court could rule. Regrettably, a carnival-like atmosphere prevailed as her family, supporters, and the Costa Rican media set up shop outside the prison where she was being held. Meanwhile, more and more pressure was brought to bear on Minister Janina Del Vecchio to overrule the Director of Immigration (who reports to her) and grant refugee status.

¶8. (SBU) Tomayko and her supporters continued to use the domestic violence issue to portray her and her daughter as victims being punished unfairly by the U.S. judicial system. None of Tomayko's supporters questioned the lack of evidence of domestic violence at the hands of ex-partner Cyprian. Del Vecchio herself acknowledged to reporters that no inquiries were made to the federal judge in Texas who originally handled the child custody case, to the FBI, or to any other U.S. authority to verify the abuse allegations, and offers of assistance from the U.S. Embassy to help establish the facts were ignored.

¶9. (U) On July 21, the Embassy sent a Diplomatic Note (our third on the Tomayko case since August 2007) reiterating that there were no allegations of domestic abuse against Cyprian, and that he had no police or criminal record. The Note also stressed that Tomayko could present her arguments before the appropriate U.S. court, and that there were many legal and social organizations in the U.S. that could provide protection against domestic violence or abuse, if any were proven. The Note expressed our concern about the implications from the habeas corpus petitions which could (if accepted) make Costa Rica a safehaven for law breakers from other countries. Finally, the Note reminded the GOCR that per our bilateral extradition treaty, naturalization proceedings should be suspended until any related extradition request had been adjudicated. (Note No. 123 emailed to WHA/CEN on August 18.)

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THE UNILATERAL DECISION  
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¶10. (SBU) On July 23, with the expected Supreme Court ruling just days away, Del Vecchio held a press conference to announce that she was granting refugee status to Tomayko in order to protect her human rights. Del Vecchio implied that Costa Rica "had" to take this action because 1) it was their duty as a world leader in the protection of human rights; and 2) the U.S. legal system would not, or could not, protect Tomayko from her ex-partner. Little thought was given to the rights of the left-behind parent, Roger Cyprian, or the arguments presented in our Diplomatic Note. In fact, during a phone conversation earlier that day on the Tomayko case, Del Vecchio gave the DCM no hint of what she planned to do.

¶11. (SBU) Del Vecchio held firm when the Ambassador and DCM met with her and Vice Minister Ana Duran on July 24. The Ambassador and DCM expressed USG disappointment with her ruling, and concern about the damaging precedent it could set for Costa Rica. Del Vecchio stood by her decision (and her right as Minister, to act unilaterally, without consulting more widely in the government). She maintained, as she had said in her press conference, that the Tomayko ruling was a "one-time decision".

¶12. (SBU) Late on July 24, the Embassy issued a strongly-worded statement echoing what the Ambassador and DCM had told the Minister in private, i.e., expressing disappointment in the Minister's decision, defending U.S. commitment to human rights, and raising concern about the implications of the legal precedent being set (text forwarded to WHA that day). However, the die was cast. Given the Minister's decision, the Supreme Court ruled on July 25 that Tomayko could not be extradited as a refugee and she was freed. On July 26, even President Arias was applauding the decision as a "sovereign" act to "protect human rights," while supportive commentators were noting the "historic" nature of the decision.

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COMMENT: A DANGEROUS PRECEDENT?  
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¶13. (SBU) Despite the legal arguments, Del Vecchio made a clearly political decision, which resonated with the Costa Rican body politic, including the President. In a later conversation with the Ambassador, Del Vecchio made it clear she had strong personal reasons to be receptive to Tomayko's concerns. However, as some Costa Rican legal commentators have already noted (and as MFA staff have worried to us in private), her ruling may have set a dangerous precedent, leading to spurious refugee claims in the future. (In fact, in another child abduction case, Amcit Nicole Kater has filed a refugee claim here on behalf of her daughter, Tierra Kater-Gehl, to prevent Tierra's father from returning the girl to the United States.) Having established that a petitioner can merely state that they have been the victim of domestic violence without offering proof could bring the GOCR more than it bargained for. Additionally, we are concerned that this case represents a disservice to those who have legitimate claims to protection from domestic violence.

¶14. (SBU) We will continue to monitor this situation carefully, and stronger follow-up action may be required if future extraditions are placed in jeopardy by the "refugee gambit". Sadly, although Tomayko has avoided returning to the U.S. to answer for her crime, she remains a fugitive with outstanding international arrest warrants against her. She has thus effectively made herself a "prisoner for life" in Costa Rica.

CIANCHETTE